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In The
Supreme Court of the State of the United States
October Term, 1987

YONKERS BOARD OF EDUCATION,

Petitioner,

v.

UNITED STATES OF AMERICA AND YONKERS BRANCH—NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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STATEMENT OF THE CASE

Both the district court and the Court of Appeals found that the Yonkers Board of Education (hereafter "YBE") engaged in a range of discriminary *and* segregative practices and was substantially influenced by racist community sentiment in making a number of critical educational decisions. We review these bases for liability below to demonstrate that the Petitioner has substantially misstated the basis for the liability findings reached below.[1] In fact, neither court held the YBE liable based

1. Thus, petitioner insists that "[T]he decision below . . . stands for the proposition that where racial imbalance in public schools is caused, in significant part, by discriminatory housing practices, school authorities may be held liable for systemwide segregation for failing to take action to rectify the results of such practices." Petition for Writ at 7. As we show below, the decision neither stands for that proposition nor any other which is at variance with settled constitutional principles.

upon the independent segregative acts of City officials. Rather, school authorities were held liable for a plethora of discriminatory and segregative decisions which *they* authored.

Municipal officials who, the evidence compellingly showed, adopted and maintained segregative housing policies in part to insure segregated schools, were held liable for the extant school segregation. But, it is critical to keep in mind that the school desegregation remedy adopted here was meant to cure the constitutional violations committed by the YBE.

I. The Existence of Segregated Schools Cannot Seriously Be Contested

At the time the Complaints in this case were filed, "the great majority of schools [in Yonkers] were either disproportionately white or disproportionately minority" (609a). About 85% of Yonkers minority elementary school students attended nine schools in Southwest Yonkers, the area of minority concentration. More than 55% of Yonkers' minority elementary school students attended "just five Southwest Yonkers schools, whose minority populations were 75%, 81%, 90%, 98% and 98%." *Id.* Of the sixteen elementary schools located outside of Southwest Yonkers, 14 had students populations that were at least 90% white. Of the eleven elementary schools in East Yonkers, only one had a minority student population of more than 7% (610a). Likewise, the middle schools and high schools displayed substantial racial segregation.

II. School Board Liability

A. Manipulation of Zones and Openings and Closings of Schools

The district court carefully assessed many boundary line changes, finding a number which were explicable only by reference to segregative intent. For example, on three occasions, the YBE changed the boundaries between two opposite race schools, Schools 16 (white) and 25 (increasingly minority) in a manner which contributed to the racial identifiability of these schools (622a-623a). The Court of Appeals agreed with the district court—the YBE had offered no factually warranted non-racial justification for these manipulations. *Id.*

Likewise, a 1963 attendance zone change between Schools 9 and 12 "was similarly unexplained by race-neutral criteria." Through this change, 40% of School 9's minority students were reassigned to School 12, a school which, before the reassignment, had a higher representation (40%) of minority children than did School 9 (15%). As the Second Circuit noted, "This boundary change was contraindicated by the relative student capacities of the two schools. According to the Board's figures, prior to the change, only 77% of the capacity of School 9 was utilized; School 12 was 96% full. The boundary change caused School 12 to be overcrowded." (624a)

The Court of Appeals also affirmed the district court's finding that the YBE's treatment of an identifiably black junior high school, Longfellow, demonstrated clearly segregative intent, with impacts on a number of other junior high facilities. In 1969, in opening another junior high school, Burroughs, the YBE re-zoned hundreds of white students from Longfellow, increasing its minority percentage to 50%. The school was severely underutilized; had no recreational facilities and had a disproportionately high proportion of minority teachers. In 1977,

when Burroughs was converted to a vocational high school, the Longfellow PTA "urged the Board to *return to Longfellow* the predominantly white area that had been rezoned from Longfellow to Burroughs in 1969" (emphasis added). As the Court of Appeals reiterated, "such a reallignment would have made use of Longfellow's excess capacity and had a desegregative effect" (625a). The YBE rejected this suggestion, reassigning these white students to two overwhelmingly white junior high schools—Emerson and Whitman—both of which were further from the homes of the affected white students than was Longfellow. *Id.*

While the YBE argued that an intention to close Longfellow motivated these reassignments, in fact, any plan to re-assign Longfellow's overwhelmingly black student body was squelched by the racially-based opposition of parents from potential receiving schools, like Twain. The Court of Appeals reaffirmed the district court's rejection of the reasons asserted for the YBE's ultimate decision to maintain Longfellow and not to re-assign its students to Twain, finding them pretextual (625a-626a).

The district court and the Court of Appeals both found the YBE to have been motivated by segregative intent in the opening of Commerce Middle School in 1973. As the Court of Appeals' decision relates, this school opened majority minority. Before its opening, the YBE considered and rejected "a number of proposals that would have avoided the creation of yet another predominantly minority school in Southwest Yonkers." As with parental opposition to movement *of* minority students into Twain, white parents from Emerson (8% minority) *opposed* any relocation "of white students to form an integrated Commerce Middle, opposition the Board perceived as grounded principally in racial concerns."

Capitulating to this pressure despite knowledge that its decision would lead to a racially-identifiable Commerce Middle School, the YBE re-assigned *no* Emerson students to the new middle school and assigned only former Gorton Junior High students to the new program. And, in succeeding years, the YBE altered Commerce Middle's boundaries to include increasing numbers of minority students (628a).

In so proceeding, the YBE rejected other integrative alternatives, such as assigning more minority students from the former Gorton Junior High zone to Emerson. To the contrary, rather than increasing the minority enrollment at Emerson, in 1973, the YBE reassigned one-third of its small minority population *out of* that school "in response to race related concerns of the Emerson community regarding the presence of minority students at the school." (628a)

The district court acknowledged that other actions by the YBE were clearly segregative: the 1976 school closings exacerbated segregation in many southwest Yonkers elementary schools. However, rather than attributing segregative design to these actions, taken alone, the district court chose to analyze them in context: the YBE had promised in 1976 to cure the known segregative impact of these closings. The district court focused on whether the YBE did so and, if not, why not. This, in turn, was part of a broader inquiry into how the YBE treated proposals to reorganize its schools and whether these decisional processes were substantially influenced by illicit racial concerns.

B. Response to Reorganization Proposals

Starting in 1968, the YBE clearly recognized that racial segregation in Yonkers "prevented equality in educational opportunity" (631a). In 1971, Superintendent Alioto observed the increasing racial imbalance in the school system, noting that minority students were concen-

trated in decrepit buildings with minimal recreational facilities. Moreover, these students were taught by teachers with much less experience than those assigned to East Yonkers' white schools. The Superintendent and his staff concluded that addressing educational inequality demanded changes: majority schools were often substantially under-used while minority-area schools were congested and over-crowded. But, when he proposed measures which would equalize educational opportunities while at the same time yield more integration, Alioto met fierce community opposition (632a). As the Court of Appeals affirmed, "Alioto believed it would be politically infeasible to proceed with desegregative efforts in the schools." *Id.* And, this recognition had a practical effect: it caused the school system to reject educationally-driven proposals which had integrative consequences.

i. The 1973 Reorganization

The Court of Appeals properly affirmed extensive district court findings that racially-based community opposition defeated educational proposals to improve the efficiency of district operations (grade re-organization) and make more equitable and available the vocational education programs. Instead, the YBE adopted "the most segregative proposals that had been made either in the NYU report [which triggered this re-organization] or in the ensuing alternative suggestions" (634a). As a consequence, an educationally-based plan which would have decentralized the highly segregated vocational program, then housed at Saunders, and offered—in an integrative manner—two complete sets of the existing vocational courses in the academic high schools was withdrawn. And implementation of a uniform grade re-organization proposal, also broached for independent educational reasons, was likewise repudiated because of the desegregative effects which would have derived from its implementation.

ii. Phase II

In August 1977, following the segregative 1976 school closings (known as Phase I) and the receipt by the YBE of recommendations of the Task Force for Quality Education, the new school superintendent, Dr. Joseph P. Robitaille, proposed Phase II which "recognized the interrelationship among the [school] system's fiscal, enrollment, utilization and racial problems" (636a). "The principal changes proposed . . . were (1) reorganization of the below-high school grade configuration to K-6 and 7-8; (2) the closing of three middle schools, Longfellow, Fermi and Burroughs; (3) the relocation of Saunders to the to-be vacated Burroughs facility; (4) the closing of Southwest Yonkers' School 6, then 98% minority, and the reassignment of its students to underutilized elementary schools to the north, with a view to improving racial balance and (5) the adoption of "Yonkers plan" for school desegregation." *Id.*

The latter proposal was meant to insure better utilization of facilities, producing efficiencies in operation which, it was uncontravertedly estimated, would result in savings of about $30 million over the succeeding ten years (637a).

The district court made extensive findings concerning the influence of illicit, racially discriminatory motives in the YBE's rejection of the bulk of Phase II (411a-413a). The district court also examined what actions the YBE took after its rejection of Phase II to address the problems which prompted that proposal (418a). Noting that Phase II had contemplated closing two overwhelmingly minority schools, Longfellow and School 6, the district court found "persistent inaction" "even though both schools were significantly underutilized, regarded as educationally inferior and physically inadequate" (419a). This, the district court found, was explicable based only on "its [the YBE's] awareness of community opposition to the desegregative reassignment of Southwest Yonkers students which the

Phase II proposals would have likely entailed." (420a)

The district court found "[T]he Board's failure to implement all or part of Phase II's desegregative proposals, or any alternatives to these proposals" "in many respects consistent with the Board's failure to implement desegregative reorganization proposals and the district's recognition of the community resistance to school desegregation. Beginning in 1970, the record discloses an awareness by school officials of the community's opposition to desegregation and a concomitant failure by school officials to adopt and implement *educationally and fiscally sound proposals which would have helped rectify the recognized racial imbalance in the district" (425a) (emphasis added).*

In short, the YBE deliberately perpetuated racial segregation. *Id.* ". . . the record makes clear that the initial reluctance to implement desegregative school reorganization plans evolved into a persistent failure to adopt measures to correct recognized educational and racial imbalances in the district in part because of their desegregative consequences" (426a). And, with this failure, the educational inequality and fiscal waste which had themselves prompted desegregative proposals grew more acute. The district court found,

> "As a result of the Board's refusal to adopt any of the desegregative proposals of Phase II, the school district's acknowledged facility under-utilization, educational inequality and racial imbalance continued." (430a)

Specifically, East Side (white) schools were substantially under-utilized (some used below 50% of student capacity), *Id.*, while over-utilization and crowding characterized west side elementary schools. On the middle school level, whites were crammed into overwhelmingly white Emerson and Twain, while 98% minority Longfellow and Fermi operated way below utilization. *Id.*

C. Systemwide Segregative Practices

i. Faculty Assignments: The district court found that the YBE assigned a disproportionate number of minority staff to disproportionately minority schools in southwest Yonkers and that this served "as a clear indication that racial segregation was acceptable even where residential segregation and transportation concerns did not impede the implementation of race-neutral assignment policies" (487a). This practice had an "appreciable impact on the schools" and "was exacerbated by the relative inexperience of the minority staff members and by the assignment of minority Special Education teachers to predominantly white schools." *Id.* The Court of Appeals affirmed these conclusions and rejected, as had the district court, the YBE's attempt to pass the blame for the staff assignments off upon its collective bargaining agreement with the Yonkers Federation of Teachers (650a). First, such practices predated that contract and second, the contract expressly allowed the Board to make assignments necessary to avoid racial imbalance in staffing.

ii. Operation of the Vocational Education Program

The district court also found that "over the years," the YBE first had "steered minority students" into vocational education programs and then adopted knowingly segregative screening policies to exclude minority students, black and Hispanic, from the elite Saunders Vocational High School. *See* 320a-335a for detailed findings of fact. Such exclusion left minority students disproportionately affected by the educational deficiencies at Gorton and Yonkers High Schools (488a).

Not only did this steering deprive minority students of admission to Saunders, the elite vocational high school, segregating that facility. It also caused a disproportionate number of west side white students to seek and gain admission into Saunders, thus increasing the prevalence of minority students at the two west side high schools, Gor-

ton and Yonkers. Thus, the discriminatory operation of the special education program directly led to increased racial segregation at three of the district's five high schools.

iii. Special Education

The district court found that the discriminatory "operation of its Special Education program . . . served to reinforce community opposition to desegregation" (488a). In short, "minority students not only were assigned in disproportionate numbers to such classes but were also accorded treatment entirely inconsistent with the Board's general neighborhood school policy." *Id.* This was so because Yonkers assigned black and Hispanic special education pupils as the *only* minority children in a number of otherwise white schools. The white students and their parents generalized from the conduct of these children and gained stereotypic impressions of minority children. These, they then applied, in the debates concerning school district reorganization, to all minority children. *See* 338a-355a for findings of fact on discriminatory nature of YBE's special education program.

iv. Unequal Educational Opportunity

While not holding the YBE responsible for creating educational inequality, the district court found significant the facts that (a) the YBE members recognized the profound inequality of educational opportunity suffered by minority children (black and Hispanic); (b) race-neutral factors guided school authorities to propose several means of alleviating the burden of inequality but (c) "the Board's . . . conduct served to perpetuate many of these inequalities, thus depriving many minority students of an educational experience comparable to that available at other public schools in Yonkers." and (d) the YBE's conduct was itself prompted by obeisance to racially segregative community sentiment (493a).

D. The Impact of the City's Liability on the YBE

While petitioner casts the district court's liability decision as solely predicated upon its failure to rectify the impact of intentionally segregative municipal decisions concerning the location of assisted housing, this is clearly not a fair reading of either that opinion or its affirmance by the Court of Appeals (505a).

While the school district's actions were fully consistent with the municipality's segregative design and the YBE came to be dominated, through the Mayor's purposeful appointments, by opponents of integration, the district court did not base its liability holding on the Board's "responsibility" for the City of Yonkers' segregative housing choices. Moreover, this is not an instance where a school board, otherwise innocent of segregative and/or discriminatory policies and practices, is held liable because of the actions of third parties not involved in the suit.

As the district court found the YBE liable for its own actions and omissions, the opinion by the Court of Appeals rests squarely on that basis as well. The Board, though fully aware that the City of Yonkers was engaged in a highly segregative policy of confining assisted housing to the area of minority concentration, the quadrant of southwest Yonkers, adhered to a neighborhood school policy (649a). The YBE did so out of an intent to perpetuate segregation and the Court of Appeals found this confirmed by reference to the systemwide segregative practices exposed by the district court. *Id.*

Contrary to the submission made to this Court by the Petitioner, the Court of Appeals read the district court's opinion to hold "that many of the Board's actions and inactions with regard to school openings, closings and attendance zone changes evinced a segregative intent" (651a). Moreover, just as on the housing side of this case, the responsiveness of decision-makers to "race-based community resistance to desegregation" informed the Board's

"persistent rejection" of all educational proposals with desegregative effect. Indeed, in affirming the liability of the YBE, the Court of Appeals did *not* rely on any claim that this defendant was legally liable because of the segregative housing policies engaged in intentionally by Yonkers' municipal officials (697a). Rather, by selectively adhering to a neighborhood school policy when it knew that this policy would increase racial segregation, the YBE violated the constitutional rights of black and Hispanic students. This intent was inferrable from a series of segregative and discriminatory practices outlined at 689a-695a. Moreover, the Court of Appeals found "entirely frivolous" any argument that the YBE's bow to white community pressure was unrelated to racism (695a). Instead, the record evidence clearly demonstrated repeated instances where such opposition dominated the YBE's decision-making. *Id.*

III. LEGAL ARGUMENT

A. AS NEITHER THE DISTRICT COURT NOR THE COURT OF APPEALS BASED ITS LEGAL CONCLUSIONS ON THE ACTIONS AND OMISSIONS OF THIRD PARTIES, THE YBE'S FIRST BASIS FOR SEEKING REVIEW IS ILLUSORY

As shown above, neither the district court nor the Court of Appeals ruled that the YBE was liable because "it did not adopt a racial balance plan to alleviate the segregative impact of public housing discrimination and ameliorate unintended educational "disparities." Instead, both decisions below rest squarely on the findings, nowhere challenged in Petitioner's writ, that the YBE (a) engaged in specific segregative acts by manipulating attendance zones and opening and closing schools; (b) failed to adopt and implement educationally and fiscally sound

policies because the impact of these would have been desegregative and pervasive racially-based opposition by whites made such actions politically unpalatable; (c) thus perpetuated segregation and acknowledged educational inequality to the detriment of minority children and (d) intentionally carried forward other systemwide practices which had both discriminatory impact upon minorities and segregative effects.

1. The Courts Below Properly Rejected Petitioner's Assertion that it Consistently Followed a "Neighborhood School" Policy

As a matter of record, both the district court and the Court of Appeals rejected petitioner's argument that it consistently followed a neighborhood school policy. Instead, where diverting from such policies furthered segregation or discrimination, i.e., the boundary changes between School 16 and 25; the assignment of whites to Emerson and Whitman, as opposed to Longfellow; the assignment of minority special education students far from their homes to East Side elementary schools, the district did not adhere to any such policy (502a-503a).

2. The YBE Operated its Neighborhood School Policy to Forward Segregative Municipal Objectives

Beyond such niceties, the district court concluded and the Second Circuit affirmed, that here, where the Mayor appoints the School Board and where he does so expressly to insure that desegregative measures are not adopted, and where the rejection of such measures carries forward intentionally created residential segregation and educational inequality, a School Board may be held liable for segregated schools despite reliance on a neighborhood school policy.

The district court found that "the combination of the City's housing policies, the mayoral appointment of

Board members and the subsequent inaction of the Board amounted to an intergovernmental effort to preserve the integrity of "neighborhood schools" whose racial segregation was governmentality sanctioned and steadfastly maintained" (500a). As the trial court wrote, "Where a City official exercises power over school board appointments as a means of furthering the city's segregative objectives and discouraging comprehensive reform, it would be anomalous to hold simultaneously that a school board's effectuation of these objectives is irrelevant in determining its liability for resulting school segregation."

Rather than challenging these propositions head-on, the petitioner starts with the assumption, contrary to this record, that the YBE was an autonomous and independent agency. The district court found otherwise—that the Mayor consciously and intentionally stacked the Board with members dedicated to furthering the municipal objective—segregated schools and segregated neighborhoods. Whatever the educational implications of adhering to such boundaries, whether they comported with student enrollments or entirely flouted, as was the case, the capacities of school buildings, the Martinelli Board was bent, as was its author, on maintaining segregation.

We believe that in light of the actual bases for liability in this case and the substantial record evidence which predicates that legal conclusion, this Court should decline to review the first question presented for review.

3. The Opinions Below Do Not Conflict With Those Rendered By Other Circuits

Nor do any of the cases petitioner cites raise any conflict between the Court of Appeal's opinion and that of other Circuits. As the Court of Appeals found,

> ". . . the district court's findings of segregative intent on the part of the Board is supported by evidence of (1) the segregative impact of its decisions and the foreseeability of

that impact, (2) the discriminatory nature of certain of its affirmative acts, which included segregation-enhancing school zone realignments, race-based staff assignments; race-based placement of minorities in special classes and prejudice-enhancing treatment of those classes, race-based decisions on school openings and closings, and systematic exclusion of minorities from vocational programs, and (3) the Board's failure, in deliberate responsiveness to the race-based opposition of some segments of the community, to implement any step that would have been desegregative." (686a)

Petitioner has not challenged any of the findings of fact underlying these conclusions as clearly erroneous, nor could it have. In this light, its statement of the first question for review has an invalid premise which, in itself, should suffice to cause denial of that portion of the writ. In short, the bases for its liability were numerous and did not include the YBE's failure to adopt a racial balance plan to cure conditions for which it bore no responsibility.

Liability rests here on what the YBE did and why it omitted other acts. This case then is distinguishable from others cited by petitioner. In *Bell v. Board of Education, Akron Public Schools,* 683 F.2d 963 (2d Cir. 1982), the Sixth Circuit considered the relevance of evidence that public housing authorities had engaged in segregative conduct where a school board was "otherwise innocent of segregative intent" (at 968). Here, the Court of Appeals' opinion affirmed the district court's conclusion that the YBE manifested unlawful, segregative intent in many ways, apart from its failure, for racially segregative reasons, to ameliorate extant racial segregation.

In *Bronson v. Board of Education of the City School District of Cincinnati,* 578 F.Supp. 1091, 1104-05 (S.D. Ohio 1984), the district court found that plaintiff had failed to identify any specific acts of the suburban defendants from which it could infer that they had done anything with the intent of confining blacks to Cincinnati. With respect

to other unnamed entities, the district court likewise found no evidence that any acted in concert with the named parties to forward racial confinement or segregation. Of course, in *Yonkers*, the district court found and the Court of Appeals affirmed findings which are fully supported on this record: that school officials worked with other municipal officials, representing the City defendants, to insure the perpetuation of segregated schools in segregated neighborhoods. The evidentiary "nexus" absent in *Bronson, supra*, linking the conduct of school officials and those responsible for housing policy, was present and proven in Yonkers. Thus, fairly read, this case stands for no legal principles at variance with those relied upon by the courts below.

Likewise, in *Higgins v. Board of Education of Grand Rapids*, 508 F.2d 779, 788 (6th Cir. 1974), the Sixth Circuit expressly stated that "while it is certainly possible for segregated schools caused by segregated housing in turn to cause worsening of residential segregation, a stronger showing of a significant effect than that presented in this case would be required to upset the finding of the trial court." There, the trial court found that neither private market housing discrimination nor state action relating to assisted housing contributed to or "caused" school segregation. On that record, the Sixth Circuit affirmed.

But, *Higgins, supra*, surely does not stand for the proposition that, in an appropriate case, where segregative state action in the housing sphere has been linked (in an evidentiary manner) to school segregation and where a joint and unconstitutional intent links actors from both spheres, and where school actors have manifested their intent through specific segregative acts and omissions, liability for the school segregation may not be placed on school authorities. As that is precisely what we have in Yonkers, *Higgins* cannot be read as authority to the contrary.

Finally, in *Deal v. Cincinnati School Board*, 369 F.2d 355 (5th Cir. 1966) and 419 F.2d 1387 (6th Cir. 1969), that Circuit rejected plaintiff's frontal attack on the neighborhood school policy in the absence of evidence that (a) the policy was being maintained in concert with intentionally segregative housing practices; (b) the policy was carrying forward segregation caused or contributed to by school authorities and (c) specific alternatives to the application of the policy which themselves had educational and financial advantages were rejected for racial reasons. As all three of these factors obtain in *Yonkers, Deal is of limited force and certainly not in conflict.* In *Deal*, the district court expressly found no evidence of *discriminatory or segregative* practice on the part of school authorities, 419 F.2d 1392.

Just as the Sixth Circuit cases cannot be construed as conflicting with the Second Circuit's decision in *Yonkers*, the Fourth Circuit's recent decision in *Goldsboro City Board of Education v. Wayne County Board of Education*, 745 F.2d 324, (1984) is inapposite. In *Goldsboro City, supra*, at 329, plaintiffs alleged that, in the face of demographic changes which made the city school system more black, it was unconstitutional for a county school system to maintain a city/county school district division which was racially neutral when commenced. Finding no evidence that the construction of public housing in the City was intended to concentrate black children in the City school district, the Circuit found inter-district school relief inappropriate. As this case did not consider a situation like that posed in *Yonkers*, it cannot fairly be said to conflict with the Second Circuit ruling in our case.

Moreover, the lessons drawn by the petitioner—that school boards should not be held liable for housing segregation—miscasts, as shown above, the bases for liability here. For all these reasons, the first question presented does not merit this Court's review.

B. THE YBE KNOWINGLY PERPETUATED EDUCATIONAL INEQUALITY OUT OF OBEISANCE TO THE WHITE MAJORITY

In posing its second question presented, petitioner suggests that it has been found liable for simply failing to insure educational equality, an illusive goal at best. However, this seriously misconstrues the district court's opinion and its affirmance by the Second Circuit.

School authorities in Yonkers recognized their obligation to provide, to the extent possible, equal educational opportunity to minority children. Moreover, starting with Superintendent Mitchell in the late 1960's, the district fully appreciated that it was failing in this task. For one, school overcrowding and a prevelance of inexperienced teachers characterized minority schools, while spacious and underutilized schools with experienced teachers typified the overwhelmingly white schools in East Yonkers. Had the students all been of one race, the district court found, school authorities would have been permitted to adopt educationally responsible techniques to adjust these inequalities, better enacting their responsibilities under state and federal law. *But,* the students were not all of the same race and when school authorities proposed reorganizations intended to ameliorate educational disparities, with attendant financial advantages, *white opposition, itself racially motivated,* prevailed and prevented the enactment and implementation of race-neutral, educationally sound policies.

The district now argues that this Court should prohibit federal district courts from 'meddling' in such situations and that federal courts cannot choose between alternative strategies for maximizing academic excellence. But these arguments are really smokescreens. This Court has long since held that when courts find that racial discrimination is influencing governmental policy, they may not turn their backs and regard such discrimination as

just another competing factor in public discourse and debate. *Village of Arlington Heights v. Metropolitan Housing Dev't. Corp.*, 429 U.S. 252, 265 (1977). Indeed, "where there is proof that discriminatory purpose has been a motivating factor in the [governmental] decision . . . judicial deference is no longer justified.' *Id.*

Here, the YBE's perpetuation of educational inequality was itself the result of white community opposition which limited educational options. Any option with integrative effects was resisted and, in this arena, the YBE generally capitulated to public pressure and failed to implement policies which had other race-neutral, educational and financial wellsprings.

The issue then is not whether "some disparities" remained in the educations offered to minority children. This is frankly beyond any rational dispute. Rather, the question is whether the district court erred in finding that the YBE capitulated to racially-motivated community pressure when it failed to implement Phase II or some alternative or when it removed all the integrative aspects of the NYU report.

As the petitioner does not challenge the underlying factual findings, its legal argument is without merit. For surely, if, as the district court found and the Court of Appeals affirmed, the YBE diverged from pursuing educationally and fiscally sound policies due to racial opposition, it violated the constitutional rights of minority children.

C. BLACKS AND HISPANICS WERE THE TWO MINORITY GROUPS DETRIMENTALLY AND INTENTIONALLY OFFENDED BY THE YBE'S UNCONSTITUTIONAL POLICIES AND PRACTICES

Contrary to petitioner's third argument, the following supports the district court and Court of Appeals' conclusion that blacks and Hispanics constituted the appropriate racial minorities in Yonkers:

1) both groups were concentrated in southwest Yonkers, the area of minority concentration, and both suffered from the conditions of segregation and educational inequality graphically depicted in the district court's opinion; *See,* 191a-192a.

2) white opposition to integration school policies, as the Court of Appeals properly stated, centered around both these minority groups, coupling them together as undesirables in a stereotypic manner;

3) the racial opposition to all proposals having desegregative consequences equally affected blacks and Hispanics, while YBE capitulation to such sentiments left both groups highly segregated in inferior educational facilities.

On these bases, the treatment intentionally accorded members of these groups differed adversely from that provided to whites, the vast majority of whom were educated in intentionally segregated, superior facilities in East Yonkers. *Keyes v. School District No. 1,* 413 U.S. 189, 197-98 (1973).

Finally, with respect to Asians, neither plaintiff suggested that Asians had been subjected to discriminatory treatment in schooling or housing in Yonkers. As school authorities did not concede any impermissible discrimination against Asians, this group was properly classified with the majority, in that its members suffered none of the

adverse effects visited upon Blacks and Hispanics. *Bradley v. Milliken*, 620 F.2d 1143, 1156 (6th Cir. 1980).

CONCLUSION

For all the reasons presented herein, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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